

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ACCOR TECHNOLOGY, INC., a Washington )  
corporation, )  
 ) No.  
Plaintiff, )  
 )  
v. ) **COMPLAINT FOR**  
 ) **TRADEMARK**  
 ) **INFRINGEMENT, FALSE**  
KEENEY MANUFACTURING COMPANY, ) **DESIGNATION OF ORIGIN,**  
INC., a Connecticut corporation, ) **VIOLATIONS OF THE**  
 ) **WASHINGTON CONSUMER**  
Defendant. ) **PROTECTION ACT, AND**  
 ) **DECEPTIVE TRADE**  
 ) **PRACTICES**  
 ) **JURY TRIAL DEMANDED**

Plaintiff Accor Technology, Inc., by and through its attorneys, for its complaint  
against Defendant Keeney Manufacturing Company, Inc., alleges as follows:

**NATURE OF THIS ACTION**

1. This is an action for trademark infringement, false designation of origin,  
unfair competition, and unfair business practices arising under the Lanham Act, 15 U.S.C.  
§ 1051 *et seq.*, the Washington Consumer Protection Act, RCW 19.86.010 *et seq.*, and  
Washington common law.

COMPLAINT FOR TRADEMARK INFRINGEMENT — 1

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**THE PARTIES**

2. Plaintiff Accor Technology, Inc. (“Accor” or “Plaintiff”) is a Washington corporation, having a principal place of business in Bellevue, Washington.

3. On information and belief, Defendant Keeney Manufacturing Company, Inc. (“Keeney” or “Defendant”), is a Connecticut corporation, and has a principal place of business in Newington, Connecticut.

**JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction over Plaintiff’s trademark infringement and federal unfair competition claims pursuant to the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338. The Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. §§ 1367.

5. On information and belief, the Court has personal jurisdiction over Defendant based on its substantial, continuous and systematic business activities within this State; business that it conducts in this State; and the fact that it advertises, sells or has caused to be sold products that are the subject matter of this lawsuit in this state, in this judicial district, and elsewhere.

6. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

**PLAINTIFF AND ITS BUSINESS**

7. Accor is a manufacturer and seller of plumbing valves and other plumbing parts and products.

1           8.       Accor owns the trademark PUSHON, which is the subject of United States  
2 Trademark Registration No. 2,763,285 for plumbing fittings and parts, namely valves, test  
3 caps for pipes, couplers and flexible couplers.

4           9.       Accor advertises and sells products, including plumbing valves and other  
5 plumbing parts, under its PUSHON trademark (hereinafter the "PUSHON Products"). The  
6 PUSHON trademark has been used to promote and advertise the sale of PUSHON  
7 Products throughout the United States and elsewhere since about 1988. The goodwill  
8 generated by such use inures to the benefit of Accor.

9           10.      By virtue of its promotional efforts and expense in advertising, promoting,  
10 and popularizing its PUSHON trademark, the mark has become well-known, and  
11 PUSHON Products have become associated with the mark.

12           11.      Through the advertising, promotional and sales efforts of Accor, a  
13 substantial amount of goodwill has come to be associated with the PUSHON Products and  
14 the PUSHON trademark.

15                   **DEFENDANT AND ITS ILLEGAL ACTIVITIES**

16           12.      Defendant Keeney is involved in the manufacture and sale of plumbing  
17 products and parts, including valves, and is willfully using the trademark "PUSH-ON" to  
18 sell plumbing products, including valves, without authorization from Plaintiff.

19           13.      The products sold by Defendant Keeney under the PUSH-ON trademark are  
20 the same or related to the same type of products sold by Plaintiff Accor under its registered  
21 PUSHON trademark. Defendant Keeney, with knowledge of Plaintiff's PUSHON  
22 trademark, is willfully using the PUSH-ON trademark, which is a variation and misuse of  
23 the PUSHON trademark of Plaintiff for plumbing fittings, to market, offer for sale, and sell

1 products, other than those supplied by or under license from Plaintiff, without  
2 authorization, in this judicial district and elsewhere.

3 **COUNT I – TRADEMARK INFRINGEMENT**

4 **UNDER THE LANHAM ACT**

5 14. Plaintiff incorporates by reference paragraphs 1-13 of this Complaint as if  
6 fully set forth herein.

7 15. Defendant's unauthorized use of the PUSH-ON trademark causes, and is  
8 likely to cause, confusion and mistake, and infringes Plaintiff's rights in its registered  
9 PUSHON trademark for plumbing fittings and parts.

10 16. Plaintiff has been and will continue to be irreparably harmed by  
11 Defendant's actions unless Defendant is preliminarily enjoined from continuing sale of  
12 products, using the PUSH-ON trademark during the pendency of this action and  
13 permanently enjoined at the conclusion of this action.

14 17. Plaintiff is entitled to recover all of (1) Defendant's profits, (2) damages  
15 sustained by Plaintiff, and (3) the costs of this action that result from Defendant's willful  
16 copying and/or use of a variation of the PUSHON trademark of Plaintiff, as well as  
17 trebling of those damages and an award of reasonable attorney fees pursuant to 15 U.S.C. §  
18 1117(a).

19 **COUNT II – FALSE DESIGNATION OF ORIGIN**

20 **UNDER THE LANHAM ACT**

21 18. Plaintiff incorporates by reference paragraphs 1-17 of this Complaint as if  
22 fully set forth herein.  
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19. Defendant's unauthorized use of the PUSH-ON trademark is intended to cause confusion or mistake, or to deceive consumers as to the source of origin of its products. Defendant's actions are likely to cause purchasers and prospective purchasers who see the unauthorized use of the mark to believe that Defendant or its products have an affiliation, connection, association, origin, sponsorship or approval of Plaintiff, or vice versa. Defendant's actions therefore constitute a false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1).

20. Plaintiff has been and will continue to be irreparably harmed by Defendant's actions unless Defendant is preliminarily enjoined from continuing the sale of products using the PUSH-ON trademark during the pendency of this action and permanently enjoined at the conclusion of this action.

21. Plaintiff is entitled to recover all of (1) Defendant's profits, (2) damages sustained by Plaintiff, and (3) the costs of this action that result from Defendant's willful infringement of Plaintiff's PUSHON trademark, as well as trebling of those damages and an award of reasonable attorney fees pursuant to 15 U.S.C. § 1117(a).

### **COUNT III – VIOLATION OF THE WASHINGTON**

#### **CONSUMER PROTECTION ACT**

22. Plaintiff incorporates by reference paragraphs 1-21 of this Complaint as if fully set forth herein.

23. Defendant's unauthorized, knowing, and willful use of the PUSH-ON trademark is intended to cause confusion or mistake, or to deceive consumers as to the source of origin of Defendant's products. Defendant's actions are likely to cause purchaser and prospective purchasers who see the unauthorized use of the PUSH-ON trademark to

1 believe that Defendant or its products have an affiliation, connection, association, origin,  
 2 sponsorship or approval of Plaintiff, or vice versa. Defendant's actions alleged above are  
 3 unfair or deceptive acts or practices occurring in trade or commerce having a deleterious  
 4 impact on the public interest and have caused injury to Plaintiff's business or property.

5 24. Defendant's actions alleged above were made in bad faith.

6 25. Defendant's actions constitute a deceptive trade practice in violation of the  
 7 Washington Consumer Protection Act, RCW 19.86.010 *et seq.*

8 26. Plaintiff has been and will continue to be irreparably harmed by  
 9 Defendant's knowing and willful use of the PUSH-ON trademark, which is a variation and  
 10 misuse of the PUSHON trademark of Plaintiff, unless Defendant is preliminarily enjoined  
 11 from continuing sale of plumbing products using the PUSH-ON trademark during the  
 12 pendency of this action and permanently enjoined at the conclusion of this action.

13 27. Plaintiff is entitled to recover damages under RCW 19.86.090 for  
 14 Defendant's actions, as well as trebling of damages and an award of attorneys' fees.

#### 15 **COUNT IV – COMMON LAW**

##### 16 **UNFAIR COMPETITION AND DECEPTIVE TRADE PRACTICES**

17 28. Plaintiff incorporates by reference paragraphs 1-27 of this Complaint by  
 18 reference as if fully set forth herein.

19 29. Defendant's unauthorized, knowing, and willful use of the PUSH-ON  
 20 trademark for plumbing fittings and parts is intended to cause confusion or mistake, or to  
 21 deceive consumers as to the source of origin of Defendant's products. Defendant's actions  
 22 are likely to cause purchaser and prospective purchasers who see the unauthorized use of  
 23 the PUSH-ON trademark to believe that Defendant or its products have an affiliation,

1 connection, association, origin, sponsorship or approval of Plaintiff, or vice versa.  
2 Defendant's actions constitute unfair competition and a deceptive trade practice in  
3 violation of Washington common law.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff Accor Technology, Inc., prays for judgment against  
6 Defendant Keeney Manufacturing Company, Inc., as follows:

7 A. Awarding Plaintiff damages for Defendant's violations of the Lanham Act,  
8 including Defendant's infringement of Plaintiff's PUSHON trademark and false  
9 designation of origin, in an amount to be determined at trial, including all of (1)  
10 Defendant's profits, (2) damages sustained by Plaintiff, and (3) the costs of this action;  
11 trebling those damages to adequately compensate Plaintiff that result from Defendant's use  
12 of the PUSH-ON trademark in violation of the rights of Plaintiff in its PUSHON  
13 trademark; and awarding Plaintiff its reasonable attorney fees; *see* 15 U.S.C. § 1117(a);

14 B. Awarding Plaintiff damages for Defendant's violations of the Washington  
15 Consumer Protection Act in an amount to be determined at trial, including all of (1)  
16 Defendant's profits, (2) damages sustained by Plaintiff, and (3) the costs of this action;  
17 trebling those damages to adequately compensate Plaintiff that result from Defendant's use  
18 of the PUSH-ON trademark; and awarding Plaintiff its reasonable attorney fees; *see* RCW  
19 19.86.090;

20 C. Awarding Plaintiff damages for Defendant's unfair competition and  
21 deceptive trade practices under Washington common law in an amount to be determined at  
22 trial;  
23

1 D. Enjoining during the pendency of this action and permanently at the  
2 conclusion of this action Defendant and each of its agents, employees, attorneys,  
3 successors, assigns, affiliates, joint venturers, and any person(s) acting for, with, by,  
4 through or under any of them from:

5 1. Sourcing, importing, selling, offering for sale, distributing,  
6 advertising or promoting any plumbing fittings or parts by use of PUSH-ON or any words  
7 or symbols that resemble Plaintiff's PUSHON trademark as to be likely to cause  
8 confusion, mistake, or deception on or in connection with any product that is not  
9 authorized by or for Plaintiff;

10 2. Using any word, term, name, symbol, device, or combination  
11 thereof that causes or is likely to cause confusion, mistake, or deception as to the affiliation  
12 or association of Defendant or its products with Plaintiff or as to the origin of Defendant's  
13 products, or any false designation of origin, false or misleading description or  
14 representation of fact;

15 3. Otherwise competing unfairly with Plaintiff in any manner; and

16 4. Continuing to perform in any manner whatsoever any of the other  
17 acts complained of in this Complaint;

18 E. Requiring Defendant, within twenty (20) days after entry of any Judgment  
19 in this case, to prepare and file with this Court and serve upon Plaintiff's counsel, a written  
20 report under oath setting forth in detail the manner in which Defendant has complied with  
21 the Judgment;

22 F. Awarding Plaintiff its reasonable costs; and  
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1 G. Granting such other and further relief as to the Court may appear just and  
2 proper under the circumstances.

3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby  
5 demands a trial by jury for all issues so triable.

6 DATED this 19th day of April, 2010.

7 DAVIS WRIGHT TREMAINE L.L.P.

8  
9 By s/ F. Ross Boundy  
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